UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,537	10/03/2000	Natalie Lashley		4697

27550 7590 05/02/2002

WALTER J, TENCZA JR.
10 STATION PLACE, SUITE 3
METUCHEN, NJ 08840

EXAMINER	
GEHMAN, BRYON P	
ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 05/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 9

Application Number: 09/678,537
Filing Date: October 03, 2000
Appellant(s): LASHLEY, NATALIE

Walter J. Tencza Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 1, 2001.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-3, 8-9 and 11 in view of Moore and Conner under 35 U.S.C. 103 stand or fall together because appellant's brief does not include a statement

that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 1-2, 4, 6, 7, 9 and 11 in view of Moore and Klein under 35 U.S.C. 103 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 1, 3, 5 and 8-9 in view of Moore and Buchholz et al. under 35 U.S.C. 103 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 17 and 18 in view of Moore, either one of Conner and Buchholz et al. and further in view of either one of Schaffer and Sandhage stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is substantially correct. The claim 9 was amended by the concurrently filed amendment

after final and accordingly appears in its proper appealed form in an appendix to this Answer.

(9) Prior Art of Record

4,624,383	MOORE	11-1986
2,217,644	CONNER	10-1940
4,757,898	KLEIN	07-1988
4,785,953	BUCHHOLZ et al.	11-1988
D328,706	RUFF	08-1992
692,166	SCHAFFER	01-1902
3,731,819	SANDHAGE	05-1973

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 8-9 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (4,624,383) in view of Conner (2,217,644). Claims 1-2, 4, 6, 7, 9 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Klein (4,757,898). Claims 1, 3, 5 and 8-9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Buchholz et al (4,785,953). Moore discloses employing a protrusion-recess combination in a container to render the container interlockingly stackable. Conner, Klein and Buchholz et al each disclose an apparatus comprising a base (5; 21; 24; 1; respectively) having a plurality of receptacles (5a; defined by 26; 54), a plurality of containers (1; 22; 18) including means (6; lower surface engaged by 26; lower surface of 18 frictionally engaged) for attaching, each of the containers inherently stackable on one another. To employ the particular container of Moore in a combination of a particular container structure for securing to a base with the base having a plurality of receptacles as suggested by any one of Conner, Klein and Buchholz et al would have been obvious in order to ship and organize a plurality of the individual containers of Moore in a manner similar to any one of Conner, Klein and Buchholz et al.

As to claim 2, Conner and Klein each disclose a first dimension of the container (6; wall of 22; 34) slightly greater than a first dimension (top of 5; defined by 26; 48) of its corresponding receptacle.

As to claim 3, Conner and Buchholz et al each disclose a first dimension of the container (cylindrical wall of 1; other than 34) slightly lesser than a first dimension (top of 5; 48) of its corresponding receptacle.

As to claim 4, Klein discloses a plurality of walls (each side defined by elements 26).

As to claim 5, Buchholz et al disclose a recess (18).

As to claim 6, Klein discloses rows and columns.

As to claim 7, to provide specific numbers of columns and rows to provide a similar arrangement to that of Klein would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

As to claim 8, to provide specific numbers of receptacles in a single row to provide a similar arrangement to that of Conner and Buchholz et al would have been obvious, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 and further in view of Ruff (D328,706). Ruff discloses providing a container of plural sides. To further modify the basic concept of the prior art employed against claim 1 employing the multi-sided shape teaching of Ruff would have been obvious, as a mere change in shape would not appear to distinguish any new and unexpected result.

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of either one of Conner and Buchholz et al as employed against claims 1 and 11 and further in view of either one of Schaffer (692,166) and Sandhage (3,731,819). Schaffer and Sandhage disclose employing a multiple container arrangement for pharmaceuticals. To employ the concept of Moore in view of either one

of Conner and Buchholz et al for particular contents such as in either one of Schaffer and Sandhage would have been obvious in order to derive the advantages of Conner and Buchholz et al for particular contents.

(11) Response to Argument

Appellant argues that the new grounds of rejection were made in the previous Office action. The new grounds of rejection were necessitated by appellant's amendment to the first Office action. If appellant believes the final rejection was premature, objection should have been made by petition, not by argument herein.

With respect to the combination of Moore with various prior art references, the examiner would rebut the appellant's consideration any difference among the prior art references as "teaching away" or rendering the references as non-analogous to be considerations that one of ordinary skill in the art would not consider to be a factor. To connect any type or size of container to a base for the purpose described for the container-base combination would have been obvious givent the teachings of the respective secondary references.

With respect to claims 17 and 18, appellant makes the argument that Moore does not suggest using the container for pharmaceuticals. It is presented that employing the container for various contents in the combination fails to render a patentable scope to the combination by the mere provision of different contents.

With respect to the stacking feature provided by Moore, to provide a container as both stackable and securable to a base is not seen as precluded, based on an isolated mention in the disclosure of Klein. To provide features to a container to render the expected advantages expected from those features is considered entirely expected within the purview of 35 U.S.C. 103.

With respect to claims 7 and 8 and the provision of a particular number of columns and rows, to provide four, five, six, seven, eight, etc. columns are not each of patentable significance for providing a particular number of containers in an array. The recitation of a particular array in and of itself is not seen as patentably significant.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Bryon P. Gehman
Primary Examiner

BPG
April 30, 2002

Conferees

DAVID T. FIDEI
PRIMARY EXAMINER

Mickey Yu
Supervisory Patent Examiner
Group 3700

WALTER J, TENCZA JR.
10 STATION PLACE, SUITE 3
METUCHEN, NJ 08840

APPENDIX

Claim 9. The apparatus of claim 1 wherein each container includes a top and a bottom and the means for attaching each container to each other container includes a protrusion at the top of each container and a recess at the bottom of each container so that a first container can be stacked on a second container by inserting the protrusion at the top of the second container into the recess at the bottom of the first container.